

MAR 07 2013

No.  
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BRUNO DEMICHELIS

PLAINTIFF

AND:

VANCOUVER CANUCKS LIMITED PARTNERSHIP and FRANCESCO AQUILINI

DEFENDANT

**NOTICE OF CIVIL CLAIM**

**This action has been started by the plaintiff for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

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**JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.**

**Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,

- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

## **CLAIM OF THE PLAINTIFF**

### **Part 1: STATEMENT OF FACTS**

1. Bruno Demichelis (the "Plaintiff") is a world renowned sports psychologist, currently residing in Vancouver, British Columbia.
2. Vancouver Canucks Limited Partnership (the "Club") is a British Columbia limited partnership that owns the Vancouver Canucks (the "Canucks"), a professional hockey team which competes in the National Hockey League ("NHL").
3. Francesco Aquilini ("Aquilini") is the managing director of the Aquilini Investment Group, the company that owns the Club, and the Chairman and NHL Governor of the Canucks.
4. The Plaintiff is a pioneer in the area of sports psychology, who founded a revolutionary sports science centre at the training complex of Associazione Calcio Milan ("A.C. Milan"), a professional football (soccer) club. The sports science centre, known as the "MilanLab", is credited with reducing player injuries and contributing to A.C. Milan's success.
5. In 2009, the Plaintiff joined Chelsea Football Club ("Chelsea F.C."), a professional football (soccer) club, as a First Assistant Coach to manager Carlo Ancelotti. The Plaintiff oversaw the human performance, scientific and medical side of team preparation, and set up the "Mind Room" at the club's training complex. In 2009 – 2010, Chelsea F.C. won both the Premier League championship and the Football Association Challenge Cup.
6. In or about March 2010, Aquilini visited the Plaintiff in London, England for the purpose of learning about Chelsea F.C.'s sport science facility, and the Mind Room.
7. During the visit, Aquilini asked the Plaintiff to leave his employment with Chelsea F.C. in order to move to Vancouver and work for the Club and the Canucks. The Plaintiff, who was under contract with Chelsea F.C. until July 2012, earning £850,000.00 per year, declined Aquilini's request.
8. In or about July 2010, Aquilini visited the Plaintiff in London a second time, and again attempted to persuade the Plaintiff to accept employment with the Club and the Canucks. Again, the Plaintiff declined.
9. In or about July 2011, Mr. Ancelotti's contract with Chelsea F.C. was terminated and the Plaintiff was given an option to cease working for Chelsea F.C., while continuing to receive his full salary until July 2012.

10. In or about July 2011, following the Canucks' defeat in the Stanley Cup Final, Aquilini visited the Plaintiff in London a third time, and again attempted to persuade the Plaintiff to accept employment with the Club and the Canucks.
11. During the third visit, Aquilini told the Plaintiff that he was very concerned about the physical and psychological condition of the Canucks players, and the negative impact it had on their performance in the Stanley Cup Final. Aquilini told the Plaintiff that he was the person the Canucks needed to improve the players' physical and psychological condition, and ultimately, their performance.
12. During this visit, Aquilini acknowledged that he could not match the salary that the Plaintiff was receiving under his contract with Chelsea F.C. However, in order to induce the Plaintiff to accept employment with the Club and the Canucks, and forego his other employment opportunities, Aquilini promised the Plaintiff that he would form a business partnership with the Plaintiff in order to build a sports science lab in Vancouver for the Canucks and the community, similar to the MilanLab (the "Canucks Lab").
13. In order to further induce the Plaintiff to accept employment with the Club and the Canucks, and forego his other employment opportunities, Aquilini promised the Plaintiff that together, as business partners, they would also market the Plaintiff's sports science technology (the "Technology") to other professional sports clubs throughout North America and the world.
14. In order to further induce the Plaintiff to accept employment with the Club and the Canucks, and forego his other employment opportunities, Aquilini promised the Plaintiff that he would enjoy secure, long-term employment with the Club and the Canucks.
15. The Plaintiff relied upon Aquilini's representations and promises, and agreed to consider employment with the Club and the Canucks, and a business partnership with Aquilini.
16. In or about September 2011, the Defendants brought the Plaintiff to Vancouver, where he met with the staff of the Club and the Canucks, including President and General Manager, Mike Gillis. During the visit, Aquilini repeated the representations and promises to the Plaintiff as outlined in paragraphs 12 to 14 above.
17. In or about November 2011, the Defendants brought the Plaintiff to Vancouver for a second visit. During the second visit, the Plaintiff discovered that an office had already been set up for him on the Club's premises, and Aquilini repeated the representations and promises to the Plaintiff as outlined in paragraphs 12 to 14 above.
18. During the next several weeks, the Plaintiff spent time with the Club and the Canucks in order to ensure the viability of secure, long-term employment.
19. In or about early January 2012, Mr. Ancelotti advised the Plaintiff that he had accepted employment with the Paris St. Germain Football Club ("PSG"), a professional football (soccer) club, and that the Plaintiff was welcome to join him and accept an offer of employment with PSG.
20. On or about January 19, 2012, the Club sent a letter to the Plaintiff stating that it had facilitated the issuance of a work permit for the Plaintiff, on the "expectation" that he might accept an offer of employment with the Club and the Canucks. The work permit was valid from November 25, 2011 to July 31, 2012.

21. The letter further advised the Plaintiff that the Club would pay for his airfare and living expenses in Vancouver through to June 30, 2012, while he considered the offer.
22. In or about February 2012, while the Plaintiff was considering the offer, Aquilini invited the co-founder of the MilanLab, Jean-Pierre Meersseman, to Vancouver in order to discuss the building and operation of the Canucks Lab and the marketing of the Technology. Aquilini took Mr. Meersseman and the Plaintiff to a large, Aquilini-owned building in Vancouver that Aquilini promised would serve as the Canucks Lab's future premises.
23. In or about that same month, Aquilini, the Plaintiff, Mr. Meersseman, and the co-founder of the Prostate Centre at Vancouver General Hospital, Dr. Larry Goldenberg, had an extensive meeting in order to discuss the building and operation of the Canucks Lab. Aquilini repeated the representations and promises to the Plaintiff as outlined in paragraphs 12 to 14 above.
24. In or about May 2012, the Club facilitated the issuance of a second work permit for the Plaintiff, which was valid from May 28, 2012 to January 31, 2013.
25. In or about June 2012, the Plaintiff, induced by and relying on the representations and promises of Aquilini as outlined in paragraphs 12 to 14, 22 and 23 above (the "Representations and Promises"), decided to accept an offer of employment with the Club and the Canucks.
26. On or about July 1, 2012, the Plaintiff entered into a contract of employment with the Club and the Canucks, partly oral and partly written, pursuant to which the Plaintiff agreed to serve the Club and the Canucks and the Club agreed to employ the Plaintiff (the "Contract").
27. The Contract contained the following express terms:
  - (a) the Plaintiff would be employed for a period commencing July 1, 2012 and continuing until June 30, 2014 (the "Term");
  - (b) the Club would continue to use reasonable efforts to assist the Plaintiff in securing all necessary authorizations to continue to work in Canada throughout the Term;
  - (c) the Plaintiff would be provided with an annual salary of \$700,000.00, a "signing bonus" of \$400,000.00, furnished living accommodations, a leased vehicle, and other benefits for the duration of the Term; and
  - (d) the Contract may be terminated for cause by the Club if the Plaintiff was no longer authorized to work in Canada.
28. The Contract also contained an express or, alternatively, implied term that the Club and the Canucks owed the Plaintiff a duty of good faith and fair dealing.
29. In order to accept employment with the Club and the Canucks, and enter into the Contract, the Plaintiff turned down the opportunity to work for PSG at a considerably higher salary.

30. The Plaintiff commenced employment with the Club and the Canucks on July 1, 2012 in the position of Director of Human Performance.
31. On September 15, 2012 the owners of the various NHL teams declared a lockout of the members of the NHL Players Association, after the collective bargaining agreement between the parties expired. As a result of the lockout, NHL games were cancelled.
32. In or about October 2012, the Plaintiff's daughter moved to Vancouver in order to join the Plaintiff and his wife.
33. Throughout his employment, the Plaintiff worked closely with the staff of the Club and the Canucks, developed an extensive plan for the implementation of the Technology for the Canucks, and proved to be an exceptional and valuable employee.
34. On or about December 20, 2012, while the NHL lockout continued, the Club sent the Plaintiff a letter in which it advised that the Club and the Canucks must terminate the Plaintiff's employment on January 31, 2013 (the "Termination Letter").
35. In the Termination Letter, the Club advised the Plaintiff that it was unable to apply on his behalf for an extension of his work permit because "there are qualified Canadians available to do the work", and that the Club therefore had just cause for the termination of the Plaintiff's employment.
36. The Club, relying on a memorandum and a letter from the Club's law firm Clark Wilson LLP, alleged that it had posted an advertisement for the Plaintiff's position and that out of the 59 applicants, 29 Canadian applicants met the requirements for the Plaintiff's position.
37. Despite facilitating the issuance of two work permits for the Plaintiff before he accepted employment with the Club and the Canucks, the Club concluded that there were "no viable options" for the Defendants to facilitate the issuance of a third work permit.
38. In order to support this allegation, the Club attached the job description that it had published for the position of Director of Human Performance. However, the job description in no way reflected the skills and expertise that the Plaintiff possessed, and for which the Plaintiff was recruited by Aquilini and the Club.
39. The Club did not offer the Plaintiff any compensation or severance payment upon terminating his employment.
40. Following the termination of his employment, the Plaintiff obtained his Citizenship and Immigration Canada ("CIC") records, and discovered that his previous two work permits, for which the Club applied on his behalf, were issued under the category known as "significant benefit". For a work permit to be issued under this category, the work the Plaintiff was to perform in Canada must be of "significant benefit to Canada."
41. The Plaintiff's CIC records contained the following remarks, which are attributable to the Club: "[The Plaintiff] is the creator of [a] unique system and founder of the MilanLab, which is designed to enhance an athlete's peak performance. [The Plaintiff] plans to work with the [Canucks] coaches, trainers and athletes to provide training and mentoring on the use of his methods. As a result, [the Plaintiff] will be able to enhance the level of play for the Vancouver Canucks."

42. Prior to issuing the Termination Letter, the Club:

- (a) failed or refused to draft an appropriate job description which related to the position, and/or the work, skills and expertise of the Plaintiff;
- (b) failed or refused to properly instruct its law firm;
- (c) failed or refused to apply for a third work permit for the Plaintiff, under the "significant benefit" category, or at all;
- (d) failed or refused to apply for a Labour Market Opinion ("LMO") for the Plaintiff;
- (e) failed or refused to obtain a thorough, informed and independent legal opinion regarding the Plaintiff's work permit status.

43. The Club's actions (or inactions) described in paragraphs 34 to 39 and 42 above constituted a wrongful dismissal of the Plaintiff, an arbitrary and willful breach of the Contract, and a breach of the terms set out in paragraphs 27 and 28 above.

44. The Plaintiff says that Aquilini had no intention of fulfilling the Representations and Promises, which were made to induce the Plaintiff to forego his other employment opportunities, move to Vancouver with his family, enter into the Contract, and obtain the Technology from the Plaintiff.

45. Further, the Plaintiff says that Aquilini knew or ought to have known that the Plaintiff would rely on the Representations and Promises to forego his other employment opportunities, move to Vancouver with his family, enter into the Contract, and provide the Technology to the Club and the Canucks.

46. The Plaintiff acted reasonably in relying upon the Representations and Promises to forego his other employment opportunities, move to Vancouver with his family, enter into the Contract, and provide the Technology to the Club and the Canucks.

47. Aquilini was negligent in making the Representations and Promises.

48. In the alternative, Aquilini acted recklessly in making the Representations and Promises, in that he did not care whether they were true or false.

49. Upon his termination, the Plaintiff suffered mental distress.

50. At the date of the Plaintiff's dismissal, he was receiving from the Club:

- (a) an income of approximately \$700,000.00 per year;
- (b) a comprehensive benefit package;
- (c) furnished living accommodations; and
- (d) a leased vehicle.

51. As a result of the wrongful dismissal and breach of the Contract, the Plaintiff has suffered loss and damage, including loss of salary and other perquisites of his employment with the Club and the Canucks, loss of other employment opportunities, including an offer of employment with PSG, loss of the value of the Technology, and special damages.
52. As a further result of the wrongful dismissal and breach of the Contract, and the breach of the terms set out in paragraphs 27 and 28 above, the Plaintiff is entitled to damages for bad faith and mental distress, and aggravated and punitive damages.
53. As a result of the negligent or reckless misrepresentations of Aquilini, the Plaintiff has suffered loss and damage, including loss of salary and other perquisites of his employment with the Club, loss of other employment opportunities, including an offer of employment with PSG, loss of the value of the Technology, and special damages.

## **Part 2: RELIEF SOUGHT**

1. The Plaintiff claims as follows against the Defendants:
  - (a) General damages for wrongful dismissal and breach of the Contract;
  - (b) General damages for misrepresentation;
  - (c) Damages for bad faith and mental distress;
  - (d) Aggravated and punitive damages;
  - (e) Special damages;
  - (f) Interest;
  - (g) Costs; and
  - (h) Such further and other relief as this Honourable Court may deem just.

## **Part 3: LEGAL BASIS**

1. The Club's actions described in Part 1 above constituted a wrongful dismissal of the Plaintiff and an arbitrary and willful breach of the Contract.
2. Aquilini's actions described in Part 1 above constituted fraudulent, negligent, or reckless misrepresentation.

Plaintiff's address for service: Coutts Pulver LLP  
1710 - 505 Burrard Street  
Vancouver, BC V7X 1M6  
Attention: Paul M. Pulver

Fax number address for service (if any): 604.682.6947

E-mail address for service (if any):

Place of trial: Vancouver, British Columbia

The address of the registry is: 800 Smithe Street  
Vancouver, BC V6Z 2E1

Date: March 7, 2013



Signature of ☐ Plaintiff ☒ Lawyer for Plaintiff,

Paul M. Pulver

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
  - (a) prepare a list of documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and
  - (b) serve the list on all parties of record.



## **Appendix**

### **Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

1. Damages for wrongful dismissal and breach of contract, and damages for fraudulent and/or negligent misrepresentation.

### **Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☐ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☒ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☐ a matter not listed here

### **Part 3: THIS CLAIM INVOLVES:**

- ☐ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☐ constitutional law
- ☐ conflict of laws
- ☒ none of the above
- ☐ do not know

### **Part 4:**

*[If an enactment is being relied on, specify. Do not list more than 3 enactments.]*